Supreme Court, U.S.
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No. 95-607

# In the Supreme Court of the United States

OCTOBER TERM, 1995

EDWARD EUGENE PURMORT AND GARY TIPTON,
PETITIONERS

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether, in a prosecution for willfully structuring cash transactions for the purpose of evading a bank's currency transaction reporting (CTR) requirements, in violation of 31 U.S.C. 5324(3) (1988), the government was required to prove that petitioners acted with a "nefarious purpose," in addition to proving that petitioners knew that their structuring was unlawful.

2. Whether, in a prosecution based on an $80,000 cash transaction structured into eight smaller transactions each involving $10,000, the government was required to prove that petitioners knew that two of those transactions, conducted on the same day and at the same bank by a husband and wife, had to be "aggregated" and that they therefore required the filing of a CTR.

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### OPINION BELOW

The amended opinion of the court of appeals (Pet. App. 1-18) is reported at 56 F.3d 1009.

### JURISDICTION

The judgment of the court of appeals was entered on May 24, 1995. A petition for rehearing was denied on July 21, 1995, and an amended opinion was issued on the same date. Pet. App. 1-3. The petition for a writ of certiorari was filed on October 12, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a jury trial in the United States District Court for the Central District of California, petitioners were convicted on one count of conspiring to structure a financial transaction for the purpose of evading federal currency transaction reporting (CTR) requirements, in violation of 18 U.S.C. 371, and one count of willfully structuring a financial transaction for the purpose of evading those requirements, in violation of 31 U.S.C. 5324(3) (1988). Each petitioner was sentenced to a term of residence in a community confinement center (four months for petitioner Tipton, two months for petitioner Purmort) and to three years' probation. The court of appeals affirmed. Pet. App. 1-18.

1. In 1988, petitioner Purmort was the manager of the Loma Linda, California, branch of Security Pacific National Bank, and petitioner Tipton was the branch operations manager. Both petitioners testified at trial that, during the relevant period, they knew that federal regulations required financial institutions to report to the Internal Revenue Service (IRS) currency transactions involving more than $10,000, and that it was illegal to structure a financial transaction for the purpose of evading those reporting requirements. Pet. App. 4.

The Stereo and Video Shop, owned by Ahd Haddad and Christine Haddad, had a business account at petitioners' bank. In March 1988, Ahd Haddad asked petitioner Tipton how he could avoid reporting his cash income to the IRS. Tipton told Haddad that, if he kept his cash deposits under $10,000, the bank would not have to file CTRs with the IRS. Pet. App. 4.

In June 1988, the Haddads went to the bank with approximately $45,000 in cash to purchase cashier's checks for their inventory supplier. They met with petitioners in a conference room, and as the Haddads and Tipton were counting the cash, Purmort whispered to Ahd Haddad, "[y]ou're going to keep bringing this much cash, you are going to get the IRS after our asses." The cash was then used to purchase four cashier's checks, each for less than $10,000; Tipton signed each check for the bank. At some point in Ahd Haddad's dealings with the bank, Tipton advised him that he should use different names when purchasing cashier's checks. Pet. App. 4-5.

In September 1988, the Haddads went to the bank with $80,000 in cash. They told Tipton that they wanted to purchase cashier's checks made out to an escrow company to be used toward the purchase of land, but that they did not want their transactions reported to the IRS. Tipton suggested that they divide the $80,000 into eight deposits in amounts of $10,000 or less. On four successive days in September 1988, the Haddads each brought $10,000 into the bank and bought separate cashier's checks made out to the escrow company. Tipton signed most of the checks, and Purmort told an employee to approve two of them. The bank did not file CTRs for any of the transactions. Pet. App. 5.

2. The Haddads and petitioners were charged with structuring the $80,000 transaction for the purpose of evading the CTR requirements and conspiring to do the same. Ahd Haddad pleaded guilty and testified for the government at trial.[1]

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[1] Christine Haddad originally pleaded guilty, but she withdrew her plea after this Court decided *Ratzlaf* v. *United*

At the close of the trial, the court instructed the jury that, to sustain its burden of proof on the offense of structuring financial transactions, the government was required to prove beyond a reasonable doubt:

> *First*: That the defendant knew of the reporting requirements, that is, that he knew that a Currency Transaction Report was required to be filed for any currency transaction over $10,000; *Second*: That the defendant knowingly structured or assisted in structuring or attempted to structure or assist in structuring a currency transaction with one or more domestic financial institutions for the purpose of evading the reporting requirements; and *Third*: That the defendant acted with knowledge that the structuring he undertook was unlawful.

Pet. App. 6-7. The jury found both petitioners guilty of the conspiracy and substantive charges.

3. The court of appeals affirmed. Pet. App. 1-18. It rejected petitioners' contention that, to prove that they had acted willfully, the government was required to show that the structuring was done for a nefarious purpose. Pet. App. 7-8. The court held that "the government was only required to prove that [petitioners] knew that they were assisting the Haddads in structuring to avoid reporting requirements, and that this structuring was unlawful." *Ibid.* (citing *Ratzlaf* v. *United States*, 114 S. Ct. 655, 663 (1994)). The court also rejected petitioners' contention (not reasserted here) that there was insufficient evidence of their

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*States*, 114 S. Ct. 655 (1994), and the district court dismissed the charges against her on the government's motion. See Gov't C.A. E.R. 11.

knowledge that their structuring was unlawful. Pet. App. 8-12. It further rejected, without discussion, petitioners' other challenges to the trial proceedings. *Id.* at 12.

Judge Noonan dissented. He noted that, under *Ratzlaf*, the government was required to show that petitioners had a "bad purpose to disobey the law." Pet. App. 14. He also concluded that the evidence did not demonstrate beyond a reasonable doubt that petitioners "knew that the particular transactions they entered into with the Haddads were unlawful structuring." *Id.* at 17.

## ARGUMENT

1. Petitioners argue that the jury instructions were deficient because they did not require the jury to find that petitioners had a "nefarious purpose" in assisting the Haddads' structuring of their $80,000 cash transaction. Pet. 6-12. That contention is incorrect.

At the relevant time, 31 U.S.C. 5324(3) (1988) provided that "[n]o person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction * * * structure or assist in structuring * * * any transaction with one or more domestic financial institutions." A willful violation of Section 5324 was made punishable as a criminal offense by 31 U.S.C. 5322 (1988).[2] In *Ratzlaf*

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[2] Congress has amended the relevant provisions of Title 31 to override *Ratzlaf*. Section 5324, the anti-structuring provision, now contains its own penalty provision, a new Section 5324(c), without the element of willfulness. Section 5322, which includes the element of willfulness that formerly applied to offenses under Section 5324, now expressly excludes Section

v. *United States*, *supra*, this Court held that, to prove a willful violation of Section 5324, the government was required to show "that the defendant knew not only of the bank's duty to report cash transactions in excess of $10,000, but also of his duty not to avoid triggering such a report." 114 S. Ct. at 662. In other words, "the jury had to find [the defendant] knew the structuring in which he engaged was unlawful." *Id.* at 663. The jury in this case was instructed in conformity with *Ratzlaf*; the district court charged that the government was required to prove beyond a reasonable doubt that "the defendant acted with knowledge that the structuring he undertook was unlawful." Pet. App. 7.

Petitioner points out that Section 5324 required that the defendant act with the purpose of evading the CTR requirements. Consistent with that requirement, *Ratzlaf* approved several lower court decisions holding that the element of willfulness required the government to prove that the defendant had "a 'specific intent to commit the crime,' *i.e.*, 'a purpose to disobey the law.'" 114 S. Ct. at 659. That formulation, however, is substantively equivalent to the court of appeals' holding (and the district court's instruction in this case) that the government must show that the defendant acted with knowledge that his undertaking was illegal.

*Ratzlaf* did not suggest that the government was also required to prove that the defendant had acted with a "nefarious purpose" other than to disobey the law. And in *United States* v. *Pomponio*, 429 U.S. 10, 12 (1976) (per curiam), the Court expressly rejected

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5324 from its reach. See Money Laundering Suppression Act of 1994, Pub. L. No. 103-325, Tit. IV, § 411, 108 Stat. 2253.

the suggestion that willfulness "requires proof of any motive other than an intentional violation of a known legal duty." See also *Cheek* v. *United States*, 498 U.S. 192, 200-201 (1991) (reaffirming *Pomponio*). *Ratzlaf* therefore cannot be read as requiring that the government prove a "nefarious purpose" in addition to proving the voluntary, intentional violation of a known legal duty.

2. Petitioners also argue that the district court should have instructed the jury that they could be convicted only if they knew that the separate $10,000 cash transactions undertaken by the Haddads on the same day and at the same bank required the filing of a CTR because those transactions had to be aggregated. Pet. 12-16. The court of appeals rejected that argument without discussion. Pet. App. 12.

Petitioners' argument misapprehends the basis of the charge against them. They were not charged with failing to file a CTR on two $10,000 cash transactions by a husband and wife that should have been aggregated to trigger the requirement to file a CTR. Rather, they were charged with assisting in the structuring of an $80,000 cash transaction to evade the CTR requirement by advising that the transaction be broken down into eight $10,000 transactions and assisting in the completion of those eight transactions. See Pet. App. 5. Their awareness that the separate $10,000 transactions were actually parts of a larger transaction that triggered the CTR requirement was sufficient to demonstrate their knowledge of the illegality of their course of action, and therefore to demonstrate their willfulness.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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